



STATE OF INDIANA

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November 20, 2015

Mr. Chad D. Fry
1925 East 770 South
Wolcottville, Indiana 46795

*Re: Formal Complaint 15-FC-293; Alleged Violation of the Open Door Law by
the LaGrange County Board of Commissioners*

Dear Mr. Fry:

This advisory opinion is in response to your formal complaint alleging the LaGrange County Board of Commissioners ("Board") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Board has responded via counsel, Mr. Kurt R. Bachman, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 28, 2015.

BACKGROUND

Your complaint dated October 28, 2015, alleges the LaGrange County Board of Commissioners violated the Open Door Law by taking official action outside a public meeting.

On October 8 or October 15, 2015, you suspect a LaGrange County Commission met with members of the Amish Community to discuss a solution to a horse drawn buggy-related manure issue. You support a measure requiring manure bags on the buggies to reduce the amount of waste expelled during the utilization of horse-drawn buggies. The Commissioner in question was invited to a demonstration of the manure bag in use. You take exception to this 'meeting' as no notice was provided to the public and you did not have the opportunity to observe.

The Board responded to your formal complaint with a detailed analysis of the manure demonstration and conceded not one, but two, Commissioners were in attendance. As the purpose of the gathering was to observe a horse using the manure bag, the Commissioners deemed it an on-site inspection as permitted under the Open Door Law.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

It is well settled and recognized a public governing body meeting behind closed doors to avoid Open Door Law requirements is not permitted. However, the Open Door Law is only triggered when a *majority* of a gathering body meets to discuss public business. See Ind. Code § 5-14-1.5-2(c). You only allege a single Commissioner was present. This would not constitute a majority of the Board and therefore the ODL is not implicated. Regardless of whether public business is discussed with others, individuals of governing bodies can act on their own accord.

Despite this, the Board concedes two Commissioners were actually present, therefore constituting a majority. However, the Open Door statute does provide some exceptions to what is considered a “gathering” or a “meeting” of public officials. For example, on-site inspections of any pending or potential initiatives are not considered a meeting under the ODL. See Ind. Code Ind. Code § 5-14-1.5-2(c)(2). While the demonstration was germane to Board business, the gathering appears to have not involved substantive policy or budgetary matters. The discussion and vote to disapprove the manure bag initiative was conducted at a subsequent public meeting.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the LaGrange County Board of Commissioners has not violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Kurt R. Bachman, Esq.